Canadian Centre
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REPORT FROM THE ROUNDTABLE ON INTERNATIONAL CORRUPTION

Marketa Geislerova,
Canadian Centre for Foreign Policy Development

June 21, 2001

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REPORT FROM THE ROUNDTABLE ON INTERNATIONAL CORRUPTION

June 21, 2001
Ottawa, Ontario

On June 21, 2001, the Canadian Centre for Foreign Policy Development organised a ***Roundtable on International Corruption.*** *Legal experts, business representatives, NGOs and government officials discussed mechanisms aimed at combatting corruption, including business integrity pacts. Among the participants were Bronwyn Best (Transparency International), Michael Davies (Canadian Council of International Business), Frances Gordon (International Centre for Criminal Law Reform and Criminal Justice Policy) and Keith Morrill (Criminal Law, Privileges and Immunities, Department of Foreign Affairs and International Trade). Steven Lee (Executive Director, Canadian Centre for Foreign Policy Development) chaired the meeting.*

This report is divided into 4 parts:

1. Corruption: an Overview
2. Legal Mechanisms to Combat Corruption
3. The role of Business
4. Summary of the Discussion

1. Corruption: an Overview

Bronwyn Best (Transparency International) gave a brief overview. A new consciousness about corruption has developed in the recent past, accompanied by an increased media coverage. She drew attention to the 1998 Transparency International Mission Statement, which provides an effective synopsis of the corruption issue:

> Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the mis-allocation of resources, harms the private sector and private sector development and particularly hurts the poor. Controlling it is only possible with the cooperation of a wide range of stakeholders in the integrity system, including most importantly the state, civil society and the private sector. There is also a crucial role to be played by international institutions.

She made several additional points:

- Corruption can be conceptualised as either "grand" or "petty." An example of the former includes abuse of public power for private gain (i.e., corruption in a state-led construction project). Petty corruption often affects the poor and includes "looting" or "large-scale

economic delinquency" (looting is prevalent in countries with weak institutions).

- Corruption often thrives in places with weak and vulnerable government institutions (i.e., parliaments, the judiciary, civil service, police), where the wider population has a limited awareness of their fundamental rights – characteristics describing some developing countries located in the "South." Nonetheless, she pointed out that there are many examples of money flowing from the "North" to the "South."
- Corruption is difficult to measure.
- Diverse actors share a responsibility for perpetuating as well as preventing corruption.
- The anti-corruption movement is global and transcends social, political, economic and cultural systems.
- There are many practical reasons, besides ethical reasons, to contain corruption.

Best drew attention Canada's efforts to combat corruption. In partnership with the business community, Transparency International Canada (TIC) played a key role in the timely ratification of the OECD Convention and encouraged the Canadian government to ratify the OAS Convention. Along with Transparency International centres across the Americas, TIC:

- helped to put in place an anti-corruption monitoring process,
- raised awareness/educated Canadian businesses and the public about the negative effects of corruption and possible anti-corruption measures,
- presented the federal government with a four point government-wide, anti-corruption agenda (ensuring, for instance, that an anti-corruption commitment is an element in all government agreements, loans, partnerships and grants, where the government and private sector interact for purposes of international business).

According to Best, despite these anti-corruption efforts, "competition to bribe" will continue and more sophisticated ways will be found to hide such activities. Next steps could include:

- Enforcement of the monitoring process spelled out in the OECD Convention.
- The proposed UN Convention should be negotiated without delay.
- Transparency International recommends that the government uses its first annual report on the *Bribery of Foreign Public Officials Act* in Parliament as an opportunity to demonstrate Canada's commitment to lead and shape the anti-corruption agenda.
- A group or committee should be created as a focal point for policy development and analysis. This group could function as a forum for coordinating anti-corruption activities across the federal government and could work with the private sector and the NGO community.

Any strategy aimed at combatting corruption should not be solely built on enforcing law and order, but be a part of broader efforts including the promotion of good governance, democracy, human rights and economic sustainable development.

2. Legal Mechanisms to Combat Corruption

Several participants, including Best, Dough Breithaupt (Criminal Law Policy Section, Department of Justice) and Keith Morrill (Criminal Law, Privileges and Immunities Section, DFAIT) addressed legal instruments for combatting corruption. They include:

- The Organisation for Economic Cooperation and Development (OECD): *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* (February 15, 1999). The OECD Convention is focussed, connected to international trade issues, and includes a robust follow-up mechanism.

- The Organisation of American States (OAS): *Inter-American Convention Against Corruption.* The OAS Convention is much broader than the OECD Convention and deals with issues beyond criminal law (including best practices). One of the shortcomings of the OAS Convention is that it lacks a strong follow-up mechanism.

- The United Nations: *Convention Against Transnational Organised Crime*. The UN Convention is the most recent attempt to address corruption. It remains to be determined whether the UN instrument should be a convention (treaty) or a resolution/declaration. The scope of the instrument is also largely undetermined.[1]

- The Council of Europe: *Criminal Law Convention on Corruption*. The Council of Europe Convention is a detailed, broad and well written document. It is aimed at members of the Council of Europe who are not in the European Union. While the follow-up mechanism is strong, the Convention lacks a clear statement of principles.

- Transparency International has brought together 11 leading private banks to sign Anti-

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[1]In resolution 55/61 (December 4, 200) the UN General Assembly requested the Secretary General to prepare a report analysing relevant international legal instruments and other documents addressing corruption. In addition, the General Assembly requested the Secretary General to convene an open-ended intergovernmental group of experts from member states of the UN to prepare draft terms of reference for the negotiation of the future legal instrument against corruption. In its resolution 55/188 (December 20, 2000) the UN General Assembly invited this group of experts to examine the question of illegally transferred funds and the repatriation of such funds to their countries of origin. The report of the Secretary General was considered at the tenth session of the commission (Vienna, May 8-17, 2001). The UN process was supported through governments-led *Global Forum on Fighting Corruption and Safeguarding Integrity II* (Hague, May 28-31, 2001). It is expected that the draft terms of reference will be forwarded to the UN General Assembly for adoption before the end of the year. Subsequently, an ad hoc committee for negotiating the UN legal instrument will be established. The negotiations of the instrument will likely commence in early 2002.

Money Laundering Guidelines: *The Wolfsberg Principles*

Keith Morrill said that while corruption is not a new issue, it is only recently that it has been addressed at the intergovernmental level through fora such as the World Bank and other International Financial Institutions. The key objective of discussions at these fora is not to build legally binding structures. Instead, attempts are made to address corruption issues outside of the treaty framework. He pointed out that a range of initiatives are driven by NGOs and businesses and stressed the importance of cooperation among NGOs, business and government sectors.

While legally binding treaty exercises get a lot of attention, more informal activities often achieve more. Treaties should be considered in a particular context:

- Regional treaties respond to regional concerns.
- Treaties may approach corruption differently (i.e., a criminal law approach or best practices/codes of conduct approach).
- Treaties have different sets of tools at their disposals.
- The follow-up mechanisms of treaties may vary significantly.
- There are particular political contexts within which treaties are created. Signatories may have different ideas about the goals of an agreement including who it should be aimed at or what the follow-up mechanism should be. Therefore, agreements should be specific rather than broad.

3. The role of Business

Michael Davies (Committee on Corruption and Bribery and the Canadian Council of International Business) said that the business community has been involved with Transparency International since its inception in 1997, providing funds and co-founding the organisation. In this context, he addressed the role of the Canadian Council of International Business (CCIB) in combatting corruption. The CCIB represents businesses and acts as a business advisory committee to the OECD. Among other activities:

- The Council pressured the Canadian government to pass and ratify the OECD Convention.
- The CCIB lobbies for strong, effective conventions/policies in diverse economic fora including the World Trade Organisation, the Free Trade Area of the Americas and the Asia-Pacific Economic Forum.
- Along with Transparency International, the Council is promoting a strong and effective monitoring mechanism for the OAS Anti-corruption Convention.
- Through the CCIB, Transparency International educates the business community about anti-corruption legislation and other issues.

Davies was optimistic about the participation of business in broad anti-corruption efforts.[2]

4. Summary of the Discussion

- Some participants agreed that the approach to fighting corruption should be broad and interdisciplinary. It should not focus only on criminal law, but include good governance issues as well. The UN Convention should reflect this approach. Canada could play an important role internationally in promoting the link between good governance and combatting corruption.

- It was suggested that any anti-corruption instrument should include an incentive structure and robust enforcement and follow-up mechanisms. Moreover, all players must be included in all the stages of negotiations and implementation, including the criminal law sector, civil society, governments and businesses etc.

- While some argued that prosecution is a necessary check on corporations to avoid corruption, others said that fining companies for corruption transgressions is sufficient and in some instances even more effective than prosecution.(Canadian criminal law provides unlimited fines on corrupt corporations.)

- Integrity pacts have been effective in deterring corruption in larger companies, including *Shell.* However, they have a lesser impact on smaller and medium size enterprises.

- The importance of international cooperation and adequate training of the police to properly collect evidence in corruption cases was emphasised.

- Some participants raised concerns that the UN *Convention Against Transnational Organised Crime* may duplicate existing legal instruments, especially if the UN adopts a criminal law approach. Others said that the issues covered by the UN Convention will not be included in the OECD Convention. Moreover, the UN Convention covers those countries (including China) not included in the regionally-specific conventions (like the OECD or OAS).

- Some pointed out that it is not yet clear whether the UN efforts will result in a convention (treaty) or just a declaration. There was a broad agreement among the participants that Canada should push for the former option and that a declaration would be largely a waste of time.

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[2]See: François Vincke, Frits Heimann and Ron Katz, eds., *Fighting Bribery* (Paris: International Chamber of Commerce Publishing, 1999)

Roundtable on International Corruption

Draft List of Participants
DFAIT, Room A2-217
June 21, 2001

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